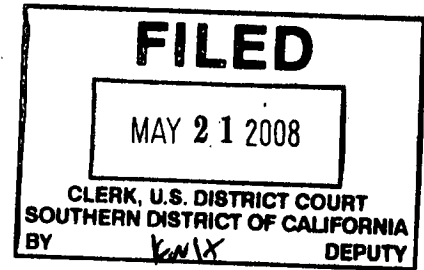


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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12  
13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

16 EL POLLO LOCO, INC. dba EL  
17 POLLO LOCO; S S & B,

18 Defendants.  
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24  
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No.

'08 CV 0917 J WMc

Plaintiff's Complaint

*Hubbard v. El Pollo Loco, Inc., et al.*  
Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Barbara Hubbard (“Hubbard”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

El Pollo Loco  
1710 Highland Avenue  
National City, CA 91950  
(hereafter “the Restaurant”)

2. Hubbard seeks damages, injunctive and declaratory relief, attorney fees and costs, against El Pollo Loco, Inc. dba El Pollo Loco and S S & B (hereinafter collectively referred to as “El Pollo Loco”) pursuant to the Americans with Disabilities Act of 1990, ( 42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. El Pollo Loco owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, and/or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. She requires the use of motorized wheelchair and a mobility-equipped vehicle, when traveling about in public. Consequently, Hubbard is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

## V. FACTS

9. The Restaurant is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Hubbard visited the Restaurant and encountered barriers (both physical and intangible) that interfered with—if not outright denied—her ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Hubbard, the barriers at the Restaurant included, but are not limited to, the following:

- The tow away signage posted is not correct;
- The detectable warnings are located on the ramp rather than just before it;
- The bottom landing of the ramp (to and from the disabled parking) is too small;
- The accessible route from the disabled parking to the entrance requires traveling behind vehicles (other than one's own);
- The accessible route from the disabled parking up to the sidewalk is too narrow;
- There is no International Symbol of Accessibility (hereinafter referred to as "ISA") on the latch side of the accessible entrance door;
- The entrance door requires too much force to operate;
- The service counter is too high and does not have a portion lowered to accommodate patrons in wheelchairs;

- 1 • The condiments for iced tea are located out of the required reach range
- 2 limits;
- 3 • The ISA designating certain seating as accessible is too small;
- 4 • The table designated as accessible is 31 inches by 41 inches;
- 5 • There is no ISA on the latch side of the restroom door;
- 6 • The restroom door requires too much pressure to operate;
- 7 • The toilet tissue dispenser obstructs the clear maneuvering space needed to
- 8 access the water closet;
- 9 • The side grab bar is mounted more than 12 inches from the back wall;
- 10 • The lock requires pinching, twisting and/or grasping to operate;
- 11 • The pipes underneath the lavatory are not properly and/or completely
- 12 wrapped; and,
- 13 • The operable part of the paper towel dispenser is mounted at more than 40
- 14 inches from the floor.

15 These barriers prevented Hubbard from enjoying full and equal access.

16 11. Hubbard was also deterred from visiting the Restaurant because she  
17 knew that the Restaurant's goods, services, facilities, privileges, advantages, and  
18 accommodations were unavailable to physically disabled patrons (such as  
19 herself). She continues to be deterred from visiting the Restaurant because of the  
20 future threats of injury created by these barriers.

21 12. Hubbard also encountered barriers at the Restaurant, which violate  
22 state and federal law, but were unrelated to her disability. Nothing within this  
23 Complaint, however, should be construed as an allegation that Hubbard is  
24 seeking to remove barriers unrelated to her disability.

25 13. El Pollo Loco knew that these elements and areas of the Restaurant  
26 were inaccessible, violate state and federal law, and interfere with (or deny)  
27 access to the physically disabled. Moreover, El Pollo Loco has the financial  
28 resources to remove these barriers from the Restaurant (without much difficulty

1 or expense), and make the Restaurant accessible to the physically disabled. To  
2 date, however, El Pollo Loco refuses to either remove those barriers or seek an  
3 unreasonable hardship exemption to excuse non-compliance.

4 14. At all relevant times, El Pollo Loco has possessed and enjoyed  
5 sufficient control and authority to modify the Restaurant to remove impediments  
6 to wheelchair access and to comply with the Americans with Disabilities Act  
7 Accessibility Guidelines and Title 24 regulations. El Pollo Loco has not  
8 removed such impediments and has not modified the Restaurant to conform to  
9 accessibility standards. El Pollo Loco has intentionally maintained the  
10 Restaurant in its current condition and has intentionally refrained from altering  
11 the Restaurant so that it complies with the accessibility standards.

12 15. Hubbard further alleges that the (continued) presence of barriers at  
13 the Restaurant is so obvious as to establish El Pollo Loco's discriminatory  
14 intent.<sup>1</sup> On information and belief, Hubbard avers that evidence of this  
15 discriminatory intent includes El Pollo Loco's refusal to adhere to relevant  
16 building standards; disregard for the building plans and permits issued for the  
17 Restaurant; conscientious decision to the architectural layout (as it currently  
18 exists) at the Restaurant; decision not to remove barriers from the Restaurant;  
19 and allowance that the Restaurant continues to exist in its non-compliant state.  
20 Hubbard further alleges, on information and belief, that El Pollo Loco is not in  
21 the midst of a remodel, and that the barriers present at the Restaurant are not  
22 isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>2</sup>

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28 <sup>1</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>2</sup> Id.; 28 C.F.R. § 36.211(b)

VI. FIRST CLAIM

**Americans with Disabilities Act of 1990**

Denial of "Full and Equal" Enjoyment and Use

16. Hubbard incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. El Pollo Loco discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Restaurant during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Hubbard alleges that El Pollo Loco can easily remove the architectural barriers at the Restaurant without much difficulty or expense, and that El Pollo Loco violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for El Pollo Loco to remove the Restaurant’s barriers, then El Pollo Loco violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

#### Failure to Design and Construct an Accessible Facility

23. On information and belief, the Restaurant was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, El Pollo Loco violated the ADA by designing or constructing (or both) the Restaurant in a manner that was not readily accessible to the physically disabled public—including Hubbard—when it was structurally practical to do so.<sup>3</sup>

#### Failure to Make an Altered Facility Accessible

26. On information and belief, the Restaurant was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

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<sup>3</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

*Hubbard v. El Pollo Loco, Inc., et al.*

Plaintiff’s Complaint



1       28. Here, El Pollo Loco altered the Restaurant in a manner that violated  
2 the ADA and was not readily accessible to the physically disabled public—  
3 including Hubbard—to the maximum extent feasible.

4                   Failure to Modify Existing Policies and Procedures

5       29. The ADA also requires reasonable modifications in policies,  
6 practices, or procedures, when necessary to afford such goods, services,  
7 facilities, or accommodations to individuals with disabilities, unless the entity  
8 can demonstrate that making such modifications would fundamentally alter their  
9 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

10       30. Here, El Pollo Loco violated the ADA by failing to make reasonable  
11 modifications in policies, practices, or procedures at the Restaurant, when these  
12 modifications were necessary to afford (and would not fundamentally alter the  
13 nature of) these goods, services, facilities, or accommodations.

14       31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
15 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
16 U.S.C. § 12205.

17       32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
18 relief) that El Pollo Loco violated the ADA in order to pursue damages under  
19 California's Unruh Civil Rights Act or Disabled Persons Act.

20                   VII. SECOND CLAIM

21                   **Disabled Persons Act**

22       33. Hubbard incorporates the allegations contained in paragraphs 1  
23 through 30 for this claim.

24       34. California Civil Code § 54 states, in part, that: Individuals with  
25 disabilities have the same right as the general public to the full and free use of  
26 the streets, sidewalks, walkways, public buildings and facilities, and other public  
27 places.





1           42. California Civil Code § 51.5 also states, in part, that: No business  
2 establishment of any kind whatsoever shall discriminate against any person in  
3 this state because of the disability of the person.

4           43. California Civil Code § 51(f) specifically incorporates (by  
5 reference) an individual's rights under the ADA into the Unruh Act.

6           44. El Pollo Loco's aforementioned acts and omissions denied the  
7 physically disabled public—including Hubbard—full and equal  
8 accommodations, advantages, facilities, privileges and services in a business  
9 establishment (because of their physical disability).

10           45. These acts and omissions (including the ones that violate the ADA)  
11 denied, aided or incited a denial, or discriminated against Hubbard by violating  
12 the Unruh Act.

13           46. Hubbard was damaged by El Pollo Loco's wrongful conduct, and  
14 seeks statutory minimum damages of four thousand dollars (\$4,000) for each  
15 offense.

16           47. Hubbard also seeks to enjoin El Pollo Loco from violating the  
17 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred  
18 under California Civil Code § 52(a).

19   IX. FOURTH CLAIM

20                               **Denial of Full and Equal Access to Public Facilities**

21           48. Hubbard incorporates the allegations contained in paragraphs 1  
22 through 13 for this claim.

23           49. Health and Safety Code § 19955(a) states, in part, that: California  
24 public accommodations or facilities (built with private funds) shall adhere to the  
25 provisions of Government Code § 4450.

26           50. Health and Safety Code § 19959 states, in part, that: Every existing  
27 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
28 altered or structurally repaired, is required to comply with this chapter.

51. Hubbard alleges the Restaurant is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Restaurant was not exempt under Health and Safety Code § 19956.

52. El Pollo Loco's non-compliance with these requirements at the Restaurant aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

#### X. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against El Pollo Loco for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that El Pollo Loco violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>4</sup>
5. Interest at the legal rate from the date of the filing of this action.

DATED: May 21, 2008

DISABLED ADVOCACY GROUP, APLC



LYNN HUBBARD, III  
Attorney for Plaintiff

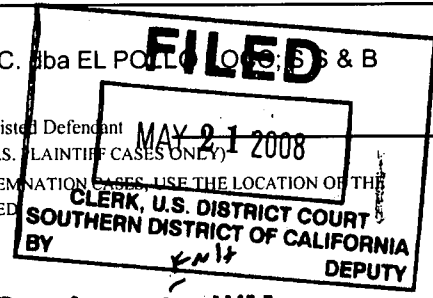
<sup>4</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.  
*Hubbard v. El Pollo Loco, Inc., et al.*  
Plaintiff's Complaint

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> BARBARA HUBBARD  <b>(b) County of Residence of First Listed Plaintiff</b> <u>SAN DIEGO</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC 12 Williamsburg Lane Chico, CA 95926 (530) 895-3252	<b>DEFENDANTS</b> EL POLLO LOCO, INC. aka EL POLLO LOCO, S & B  County of Residence of First Listed Defendant <u>SAN DIEGO</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED  Attorneys (If Known) _____  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">             '08 CV 0917 J WMC           </div>
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)				<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U.S. Government Plaintiff		<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State		Citizen of Another State	
<input type="checkbox"/> 2 U.S. Government Defendant		<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		Citizen or Subject of a Foreign Country			

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes			

<b>V. ORIGIN</b> (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C. Section 12101, et seq.</u>  Brief description of cause: <u>Ongoing violations of the ADA Construction Standards</u>
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> _____	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____	DOCKET NUMBER _____	DATE _____
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SIGNATURE OF ATTORNEY OF RECORD: LAH

DATE: 05/21/2008

FOR OFFICE USE ONLY

RECEIPT # 151215 AMOUNT \$350 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

05/23/08

CA

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 151215 - MB**

**May 23, 2008  
09:11:20**

**Civ Fil Non-Pris**

USAO #: 08CV0917 CIVIL FILING

Judge.: NAPOLEON A JONES, JR

Amount.: \$350.00 CC

**Total-> \$350.00**

FROM: BARBARA HUBBARD VS  
EL POLLO LOCO INC